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5 UNITED STATES DISTRICT COURT  
6 EASTERN DISTRICT OF WASHINGTON

7 HECTOR ENRIQUES PEREZ,

8 Petitioner,

9 v.

10 JEFFREY A. UTTECHT,

11 Respondent.

NO: 1:17-CV-3006-RMP

ORDER ADOPTING REPORT AND  
RECOMMENDATION AND  
DISMISSING HABEAS PETITION

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13 **BEFORE THE COURT** is a Report and Recommendation (“R&R”), **ECF**  
14 **No. 30**, filed by Magistrate Judge John Rodgers on June 5, 2017, resolving a motion  
15 to dismiss, **ECF Nos. 20 and 26**, filed by the Washington Attorney General on  
16 behalf of Respondent Jeffrey Uttecht. Petitioner timely objected to the R&R. ECF  
17 No. 32. Having reviewed the parties’ filings, the R&R, and the relevant law, the  
18 Court is fully informed.

19 Mr. Perez argues that he is entitled to tolling of the statute of limitations  
20 during the period in which his personal restraint petitions were pending. ECF No.  
21 32 at 3-7. The Court notes that Magistrate Judge Rodgers determined that Mr.

ORDER ADOPTING REPORT AND RECOMMENDATION AND DISMISSING  
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1 Perez's habeas petition would be time-barred even if the statute of limitations were  
2 tolled throughout the period when all of the PRPs that Mr. Perez filed. ECF No. 30  
3 at 5.

4 Mr. Perez further argues that he is entitled to an equitable exception to the  
5 statute of limitations because he has made a credible showing of actual innocence.  
6 ECF No. 32 at 20. Mr. Perez relies on a Washington state appellate decision, *State*  
7 *v. Wilson*, 174 Wn. App. 328 (2013), discussing expert witness testimony about a  
8 physical virginity examination of a minor who allegedly had been the victim of  
9 sexual assault. *See* ECF Nos. 1 at 7-9; 32 at 20. Although not explicit about how  
10 the expert witness opinion and evidence discussed in *Wilson* amounts to a showing  
11 of actual innocence, Mr. Perez suggests that the absence of such evidence in his case  
12 resulted in his conviction. *Id.*

13 The Court finds no persuasive showing of actual innocence in Mr. Perez's  
14 habeas petition or objection to support equitable tolling of the time-bar. *See*  
15 *McQuiggin v. Perkins*, 133 S. Ct. 1924, 1928 (2013) (requiring that a petitioner who  
16 seeks actual innocence relief from a statute of limitations to offer new, reliable  
17 evidence and "show that it is more likely than not that no reasonable juror would  
18 have convicted him in light of the new evidence"). Therefore, the Court **adopts** the  
19 Report and Recommendation, **ECF No. 30**, in its entirety.

Accordingly, **IT IS HEREBY ORDERED** that Respondent's Motion to Dismiss, **ECF No. 20**, is **GRANTED**, and Petitioner's Petition for Writ of Habeas Corpus, **ECF No. 1**, is **DISMISSED**.

**IT IS SO ORDERED.** The District Court Clerk is directed to enter this Order and provide copies to Petitioner and counsel for Respondent and **close** the file.

The District Court Clerk is directed to enter this Order and provide copies to counsel.

**DATED** September 28, 2017.

*s/ Rosanna Malouf Peterson*  
 ROSANNA MALOUF PETERSON  
 United States District Judge